

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MICHELLE R KAGEMANN
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MT PLEASANT IA 52641

EDWIN LONGNECKER
IRIS CITY CLEANERS
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Appeal Number: 04A-UI-05479-H2
OC: 04-25-04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 10, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Burlington, Iowa, on July 26, 2004. The claimant did participate. The employer did participate through Edwin S. Longnecker, Owner. Claimant's Exhibits A, B and C were received into the record. Employer's Exhibits One through Three were received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a presser full time beginning in September 1996 through March 12, 2004 when she voluntarily quit her employment rather than be discharged. The claimant was under a court order to attend drug and alcohol evaluation on Friday, March 12, 2004 at 1:00 p.m. The claimant had been involuntarily hospitalized from March 4, 2004 through March 9, 2004 and as a condition of her release she was court ordered to attend an evaluation appointment on March 12, 2004 at 1:00 p.m. The claimant told Mr. Longnecker that her initial appointment could not be changed but that subsequent appointments for treatment could be altered by her and would not interfere with her work schedule. The claimant received a letter from Mr. Longnecker dated March 12, 2004 that clearly stated if she were absent from work again she would be discharged. The claimant attempted to explain to Mr. Longnecker that she had no choice but to go to her 1:00 p.m. appointment or she would be recommitted to the hospital. The claimant had vacation time and personal time available to her for her use on March 12, 2004. Mr. Longnecker refused to give the claimant permission to miss work on March 12, 2004 and told her that, if she did leave to attend her court ordered evaluation, she would be discharged. The claimant quit instead of waiting to be discharged and did attend her March 12, 2004 1:00 p.m. evaluation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The claimant was given the choice to quit or be discharged when she missed work for her medical evaluation on March 12, 2004. Under these circumstances, the administrative law judge concludes that her separation was a discharge, not a voluntary quit. The claimant had no choice but to miss work to attend her medical evaluation on March 12, 2004 as it was part of the agreement to release her from the hospital and part of a court ordered plan of treatment. The claimant's counselor confirmed that the claimant was not allowed to change her appointment on March 12, 2004 to accommodate her work schedule but that future treatment appointments would be arranged so as to accommodate the claimant's work schedule. The claimant had missed work previously but most recently due to hospitalization. The claimant made it clear to Mr. Longnecker on the morning of the 12th that she had no choice but to attend the appointment. The claimant had not received any warning that her job was in jeopardy if she had another unexcused absence other than the letter she received on March 12, 2004 that told her if she left work she would be discharged. It was reasonable for the claimant, having read the letter, to believe that Mr. Longnecker was going to fire her if she left work to attend her 1:00 p.m. medical appointment. The claimant's leaving work to attend a court mandated medical appointment is not an unexcused absence. The claimant had no choice but to attend the appointment. The employer has failed to establish that the claimant's leaving work on March 12, 2004 to attend a court ordered medical evaluation was substantial misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The May 10, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc